

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

VICTOR OGDEN,

Plaintiff,

v.

JOHN R. STEPANIK, et al.,

Defendants.

CIVIL ACTION NO. 3:96-CV-435

(JUDGE CAPUTO)

MEMORANDUM

Presently before the Court is Plaintiff's appeal of the Clerk's taxation of costs filed pursuant to Local Rule 54.3. (Doc. 359.) Plaintiff's primary contention is that he is unable to pay the \$575.25 in costs awarded by the Clerk because of his indigent status. The United States Court of Appeals for the Third Circuit has instructed district courts to consider a losing party's indigency or inability to pay costs when awarding costs at the conclusion of a civil action. *In re Paoli R.R. Yard Litig.*, 221 F.3d 449, 464 (3d Cir. 2000). If the losing party has presented evidence that he is in fact indigent or otherwise unable to pay costs, the Court then may, in its discretion, exempt the losing party from costs. *Id.*

Plaintiff has presented evidence that he is in fact unable to pay costs. He is incarcerated and has no source of income. Accordingly, the Court will vacate the Clerk's Judgment (Doc. 358) which taxed costs against Plaintiff.

An appropriate Order follows.

May 9, 2005

Date

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge

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ORDER

NOW, this 9th day of May, 2005, **IT IS HEREBY ORDERED** that the Clerk's Judgment (Doc. 358) is **VACATED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge